**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL MISC.APPLICATION No. 6392 of 1999**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE D.H.WAGHELA**

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

**MANSUKHBHAI D KAKKAD BRANCH MANAGER - Applicant(s)**
**Versus**
**STATE OF GUJARAT & 2 - Respondent(s)**

==========

**Appearance :**
DR SONIA HURRA for Applicant(s) : 1,
MR.HL JANI APP for Respondent(s) : 1,
MR PV HATHI for Respondent(s) : 2,
MR DHIRENDRA MEHTA for Respondent(s) : 2,
MR SHIRISH JOSHI for Respondent(s) : 3,

==========

**CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA**

**Date : 16/04/2007**

**ORAL JUDGMENT**

1. Even as Dr.Sonia Hurra, originally appearing for the petitioner, has placed on record her note for retirement from the matter, it was seen from

the record that the petition under Section 482 of the Code of Criminal Procedure, 1973 sought quashing of the F.I.R. registered as C.R.No.32 of 1999 in Jam Khambhalia Police Station of Jamnagar district. The complaint was lodged for the offence punishable under Section 188 of the Indian Penal Code on the basis that respondent No.2 had issued order dated 15.07.1999, in exercise of the power conferred under Section 152 of the Bombay Land Revenue Code, 1879, to freeze all the bank accounts belonging to or maintained and operated by respondent No.2, till realisation of the outstanding land revenue amounting to Rs.15,26,602/-. A notice on that basis was issued to the Manager of Bank of Baroda, Mithapur Branch and, as alleged in the F.I.R., the aforesaid order dated 15.07.1999 was not implemented.

2. According to the uncontroverted averments made on oath in the petition, respondent No.3 was enjoying various credit facilities with the petitioner bank and, at the relevant time,

respondent No.3 was having debit balance and there being no credit balance in the account with the petitioner, it was informed to the Taluka Development Officer that operation of the credit facilities could not be freezed. That there was no *mala fide* intention and no offence was committed by the petitioner and, in any case, respondent No.3 had fully paid the aforesaid amount of land revenue by cheque dated 12.08.1999 favouring Taluka Development Officer, Dhwarka. Therefore, the cause of action, if any, for filing the F.I.R. on 15.09.1999 was not surviving. The whole matter was also *sub-judice* before this Court in the form of Appeal from Order No.397 of 1999. Respondent No.3 had made the grievance that respondent No.2 had almost raided the premises and extracted the amount. It is alleged in the petition that respondent No.2 had being annoyed by the facts and circumstances, lodged the complaint in question against the petitioner and the investigation into the so-called alleged offence or the prosecution of the

petitioner would be just for wreaking vengeance and by way of an abuse of the process of Court. It is also alleged that respondent No.3 had enjoyed credit facilities with other banks but respondent No.2 had not issued any order freezing other accounts of respondent No.3 even as the petitioner had only debit balance in the relevant accounts. It is alleged, on that basis, that the order issued at the instance of respondent No.2 to freeze the account of respondent No.3 was itself bad in law, arbitrary and discriminatory.

3. In view of the above facts and submissions, it was fairly conceded by learned A.P.P. Mr.H.L. Jani that the real cause of action for filing the F.I.R. was not surviving and investigation into the offence or prosecution of the petitioner for the alleged offence may be sheer waste and abuse of the process of Court. Therefore, the petition was required to be allowed.

4. Accordingly, petition is allowed. The aforesaid F.I.R. registered as C.R.No.32 of 1999 in Jam Khambhalia Police Station, Jamnagar is quashed and Rule is made absolute with no order as to costs.

(D.H.WAGHELA, J.)

Hitesh